IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1465 of 2007

Kadabi .. Petitioner

Vs.

1. State of Tamil Nadu
   rep. by its Secretary to Government
   Prohibition & Excise Department
   Fort St.George, Chennai 600 009.

2. The Commissioner of Police
   Greater Chennai, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.C.C.Chellappan
For Respondents : Mr.N.R.Elango
Additional Public Prosecutor

O R D E R

(Made by P.D.DINAKARAN,J.)

The petitioner, who was incarcerated by order dated 4.9.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, seeks a writ of Habeas Corpus to call for the records in connection with the order of detention passed in proceedings No.363/2007, to quash the same and to produce the detenu, now confined at Central Prison, Chennai before this Court and set him at liberty.

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2. On the basis of a complaint lodged by one Devaraj that on 23.8.2007 at about 13.30, while he was returning after handing over the flowers to his customer at Shenoy Road, the detenu and his associate wrongfully restrained him and threatened to hand over the money to him. When the complainant replied that he had nothing in his pocket, the detenu beat him on his cheek and voluntarily inserted his hand into the shirt pocket and took away Rs.250/-. His associate snatched the gold ring of the complainant and threatened that he would do away him and they tried to escape from the spot. The complainant raised hue and cry. When two persons who were standing nearby tried to apprehend the detenu and his associate, the detenu picked up stones from the road side and pelted the same against them, which scattered all over the roadside. On noticing the atrocious activities, the public ran for safer places to save their lives resulting in traffic dislocation. The detenu was arrested and a case was registered in Crime No.930/2007 on the file of F3 Nungambakkam Police Station, for the offence punishable under Sections 341, 336, 392 and 506(2), IPC.

3. The second respondent, taking note of the above case as a ground case and five adverse cases in Crime No.1417/2006 on the file of F3 Nungambakkam Police Station and Crime Nos.718/2007, 1343/2007, 1442/2007 and 1471/2007 on the file of T6 Avadi Police Station for the offence under Sections 457 and 380, IPC ordered his detention dubbing him as a goonda.

4. The main contention of the learned counsel for the petitioner assailing the order of detention is that while all the adverse cases referred to in the grounds of detention relate to the offence punishable under Section 457 and 380 IPC, the solitary instance mentioned in the ground case, which relate to the offence punishable under Sections 341, 336, 392 and 506(2), IPC is not relevant for sustaining the order of detention. The learned counsel, in support of the said plea, relied upon the decision of the Apex Court in DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446].

5. We have heard learned Additional Public Prosecutor on the above said point.

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6. As rightly pointed out by the learned counsel for the petitioner, it is evident that the adverse cases mentioned in the grounds of detention do not relate to any law and order problem. But, the offence said to have been committed by the detenu as per the ground case attracts the provisions of the Tamil Nadu Act 14 of 1982.

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7.1. In DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], cited supra, whereunder the order of detention was based on the solitary instance of robbery, the Apex Court held as follows:-

> "... Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order."

7.2. That apart, the above ratio laid down by the Apex Court was followed by a Division Bench of this Court, in which one of us (P.D.DINAKARAN, J.) was a party, in MALA v. THE SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, GOVT. OF TAMIL NADU, CHENNAI, [(2004) M.L.J. (Crl.) 306].

8. Admittedly, in the instant case, the adverse cases relate to the offence of theft punishable under Sections 457 and 380, IPC and the ground case relates to the offence of robbery punishable under Sections 341, 336, 392 and 506(2), IPC and hence, we are of the opinion that the ratio laid down in DARPAN KUMAR SHARMA's case, cited supra, squarely applies to the present case on hand, which is also not disputed by the learned Additional Public Prosecutor.

9. Applying the ratio laid down by the Apex Court in Darpan Kumar Sharma's case, cited supra, we are inclined to set aside the order of detention, Accordingly, the order of detention is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be released forthwith, unless he is required in any other case.

Kpl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government
   Prohibition & Excise Department
   Fort St.George, Chennai 600 009.

2. The Commissioner of Police
   Greater Chennai, Chennai.

3. The Superintendent,
   Central Prison, Chennai.

4. The Joint Secretary
   to the Government of Tamil Nadu,
   Public (Law and Order) Department,
   Fort St George, Chennai 9.

5. The Public Prosecutor,
   High Court, Madras.

JRG(CO)
SR/7.1.2008

H.C.P.No.1465 of 2007.

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